IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

FILED
JAN 14 2011
JAN 14 2011
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DWAYNE A. BUSH, an individual, **Plaintiff**	)	
-vs-	)	**No.**
MORAN INDUSTRIES, INC., an Illinois corporation d/b/a MR. TRANSMISSION, J & J TRANSMISSIONS, INC., an Illinois Corporation d/b/a MR. TRANSMISSION, and JOHN GIBLIN, an Individual., **Defendants**	)	11CV289 JUDGE COLEMAN MAG. JUDGE BROWN

COMPLAINT

Plaintiff, DWAYNE A. BUSH, by and through his attorneys, LAPORTE & ASSOCIATES, P.C., for his Complaint against the Defendants, MORAN INDSUTRIES, INC. d/b/a MR. TRANSMISSION, J & J TRANSMISSIONS, INC. d/b/a MR. TRANSMISSION, and JOHN GIBLIN, states as follows:

THE PARTIES

1. Plaintiff Dwayne A. Bush ("Bush") is an individual and a resident of Stone Mountain, Fulton County, Georgia. Bush is African-American.

2. Defendant Moran Industries, Inc. ("Moran") is an Illinois corporation with its principle place of business in Midlothian, Cook County, Illinois. Moran is in the business of performing service and repairs of automobile transmissions for consumers in the State of Illinois under the trade name "Mr. Transmission."

3. Defendant J & J Transmissions, Inc. ("J & J") is an Illinois corporation with its principle place of business in Bourbonnais, Kankakee County, Illinois. J&J is in

the business of performing service and repairs of automobile transmissions for consumers in the State of Illinois under the trade name "Mr. Transmission." On information and belief, J&J is the agent of Moran with respect to performing service and repairs of automobile transmissions.

4. Defendant John Giblin ("Giblin") is an individual and, on information and belief, a resident of Peotone, Will County, Illinois. On information and belief, "Giblin" is the agent of J & J and/or Moran Industries, Inc. with respect to performing service and repairs of automobile transmissions for consumers. Giblin is White.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this cause pursuant to 28 U.S.C. §§1343(a)(3) and (4) and 28 U.S.C. §1331 as it is an action to secure redress for the deprivation of civil rights secured by 42 U.S.C. §1981. This Court has supplement jurisdiction over the state court claims alleged herein pursuant to 28 USC §1367.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and (c) by reason that all Defendants reside in this judicial district.

FACTS COMMON TO ALL COUNTS

7. Plaintiff re-alleges and incorporates by reference paragraphs "1" through "6" as their paragraph "7," as though fully set forth herein.

8. Bush is the owner of a 1994 Cadillac Concours automobile, bearing Vehicle Identification Number 1G6KF52Y4RU300169 ("the Vehicle").

9. On or about September 21, 2010, Bush drove the Vehicle from his home in Stone Mountain, Georgia to his brother's home in Monee, Illinois to attend his daughter's wedding.

10. During this trip, the "Service Engine Soon" light appeared on the Vehicle's instrument panel. There were no other issues with the operation or functioning of the Vehicle, with the exception that the "Service Engine Soon" light was lit.

11. Bush thereafter contacted his mechanic in Tucker, Georgia, who advised Bush on how to obtain the read out from the Vehicle's onboard computer. Bush followed his mechanic's instructions and obtained an error code of P076. Bush's mechanic advised that error code P076 indicated a possible problem with the Vehicle's transmission, and recommended that the Vehicle be taken to a local repair shop to determine if there was, in fact, a problem with the Vehicle's transmission.

12. On October 1, 2010, Bush took the Vehicle to Mr. Transmission located at 880 Armour Rd., Bourbonnaise, Illinois and met with Giblin, an owner, operator, or employee of Mr. Transmission.

13. The Vehicle's transmission had shifted without problem through out the trip from Georgia to Illinois, and functioned properly at all times prior to Bush taking the Vehicle to Mr. Transmission.

14. Giblin stated to Bush that error code P076 could be caused by external problems accessible from under the pan of the transmission, internal problems accessible from the side of the transmission, or internal problems inside the transmission resulting from parts failures.

15. Bush informed Giblin that due to the age of the Vehicle he was not willing to spend more than $2,000.00 to repair the transmission.

16. Bush left the Vehicle with Giblin with explicit instructions to diagnose the problem and to call him with a repair estimate.

17. Later, that day, Giblin called Bush and stated that he had disassembled the subassembly of the engine and the transmission, that he had disassembled the transmission, and that the transmission needed to be removed and disassembled because all of the gears and hard parts were worn out and needed to be replaced. Giblin provided a repair estimate of $3,456.00. Giblin knew at the time he made these statements that the gears and hard parts were not worn out, and were not in need of replacement.

18. Bush informed Giblin that he had not given his authorization for Giblin to disassemble the transmission. Giblin refused to reassemble the transmission and return the Vehicle to Bush unless, and until, Bush paid $3,456.00.

19. On or about October 2, 2010, Bush and his brother, Robert D. Bush, met with Giblin at the Mr. Transmission shop. Giblin showed Bush and his brother certain transmission parts that Giblin claimed were from the Vehicle and that Giblin claimed were worn and needed to be replaced. The transmission parts did not look worn or in need of replacement.

20. In reliance on Giblin's representation that the transmission needed to be rebuilt or replaced, Bush purchased a remanufactured transmission from Coleman Taylor Transmission in Memphis, TN for $1,858.00. Giblin agreed to install the Coleman Taylor transmission for a fee of $750.00.

21. The Coleman Taylor Transmission was delivered to Mr. Transmission on October 7, 2010.

22. Giblin installed the Coleman Taylor Transmission and then represented to Bush that the Coleman Taylor Transmission was defective. Giblin knew at the time he made this statement that the Coleman Taylor Transmission was not defective.

23. After consultations between a representative at Coleman Taylor Transmission, Bush, and Giblin, it was agreed that the Coleman Taylor Transmission was not defective, and that the Vehicle was experiencing the same problem that existed prior to Bush taking the car to Mr. Transmission.

24. Despite Giblin's representations to the contrary, the cause of the P076 error code was issues external to the transmission that did not necessitate the transmissions removal and the purchase of another transmission.

25. The appropriate standard of care for transmission repair mechanics under similar circumstances required the mechanic to first rule out external causes of the P076 error code before removing and disassembling the Vehicle's transmission.

26. Bush, having lost all faith in Mr. Transmission and Giblin to deal with him in an honest and competent manner, requested that he be allowed to tow the Vehicle to a Cadillac dealership.

27. On or about October 11, 2010, Bush, believing that he was the victim of a fraud, notified the Bourbonnaise Police Department, and traveled to Mr. Transmission with his brother Robert. A Bourbonnaise police officer met Bush and his brother Robert at Mr. Transmission.

28. Bush attempted to pay Mr. Transmission the $792.50 agreed upon for installation of the Coleman Taylor Transmission by tendering his Visa credit/debit card to Giblin. The entrance way for Mr. Transmission contains signs indicating that the business accepts Visa cards.

29. At the time Bush tendered his Visa credit/debit card to Giblin, Bush had the appropriate available credit and funds in the bank account to cover the transaction.

30. Upon being tendered Bush's Visa credit/debit card, Giblin refused to accept it as payment, stating "I accept credit cards but not from you guys."

31. Bush and his brother Robert were also referred to as "you people" in a disgusting tone of voice spoken by an unknown White female employee or agent of Mr. Transmission.

32. Bush and his brother Robert interpreted the statement of "I take credit cards but not from you guys" and being addressed as "you people" by employees or agents of Mr. Transmission as a strong indication that Bush was being treated differently because of his race.

33. Giblin has and continues to refuse to release the Vehicle to Bush under the same terms and conditions that Giblin grants other customers of Mr. Transmission.

34. Because Giblin refuses to release the Vehicle, Bush was forced to rent a car to return to his home in Georgia.

35. On October 15, 2010 Giblin and Mr. Transmission sent Bush a form letter via certified mail in which Giblin and Mr. Transmission stated that, because Mr. Transmission had not received payment, Mr. Transmission was charging Bush $20.00 per day storage charges, and that Mr. Transmission was asserting a "mechanic's lien" on the Vehicle. A true and accurate copy of this letter is attached hereto as Exhibit A.

36. Bush replied to the October 15, 2010 letter from Mr. Transmission and Giblin in a letter sent certified mail on October 25, 2010. In the letter, Bush informs Giblin and Mr. Transmission that he disputes his right to a lien on the vehicle and Giblin and Mr. Transmission's right to assess storage charges. A true and accurate copy of this letter is attached hereto as Exhibit B.

37. Mr. Transmission and Giblin responded to Bush's October 25, 2010 letter with a telephone call and voice-mail recorded on Bush's cell phone messaging service. In this voice-mail, Giblin states that he "doesn't care what its says it's twenty bucks a day." Giblin further states "Not going to take Visa, not going to take a Mastercard from you, not gonna take Discover." Giblin further threatens to "sell your car for what it's sitting here for plus storage charges." Giblin states "I don't care about any of the rest of the crap in your letter" and "Sir, you have no choices in this stuff, it's my shop."

38. Mr. Transmission and Giblin have refused repeated requests by Bush's attorney to inspect the Vehicle and the transmission and transmission parts removed from the Vehicle.

COUNT I
DEPRIVATION OF CIVIL RIGHTS
AFFORDED PURSUANT TO 42 U.S.C. §1981

39. Plaintiff re-alleges and incorporates by reference paragraphs "1" through "38" as its paragraph "39," as though fully set forth herein.

40. Bush is African-American and therefore a member of a protected class.

41. Bush sought to enter into a contractual relationship with Defendants and met the Defendants' ordinary requirements to pay for and receive the goods and services ordinarily provided by Defendants to other similarly situated customers.

42. Defendants wrongfully denied Bush the opportunity to contract for goods or services along the same terms that are otherwise afforded to Defendants' white customers.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter judgment in favor of Plaintiff and against each Defendant jointly and severally and:

A. Declare that the conduct of Defendants is in violation of the rights guaranteed to Plaintiff under 42 U.S.C. §1981 and other appropriate federal statutes;

B. Grant a permanent injunction against Defendants, its officers, agents, and assigns, and all persons acting in concert with them, from engaging in further business practices that discriminate on the basis of race;

C. Grant to the Plaintiff all consequential, compensatory, punitive, and other damages the Court may deem appropriate;

D. Grant the Plaintiff his attorneys' fees, costs, and expenses;

E. Grant to Plaintiff any other relief the Court deems to be fair, equitable, and just.

COUNT II
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT

43. Plaintiff re-alleges and incorporates by reference paragraphs "1" through "38" as its paragraph "43," as though fully set forth herein.

44. Defendants, at all relevant times, were subject to the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 *et. seq.,* and the Illinois Automotive Repair Act, 815 ILCS 306/1 *et. seq.*

45. Pursuant to 815 ILCS 505/2Z, violations of Illinois Automotive Repair Act constitute violations of the Illinois Consumer Fraud and Deceptive Practices Act.

46. Defendants knowingly violated the Illinois Automotive Repair Act in one or more of the following ways:

A. Disassembled the Vehicle's transmission without providing a written estimate of the cost of such disassembly and reassembly in violation of 815 ILCS 306/15(b)(4);

B. Failed to provide a written estimate of the cost of diagnostics and repairs meeting the disclosure requirements of 815 ILCS 306/15;

C. Charging for unnecessary repairs in violation of 815 ILCS 306/80(6);

D. Charging for diagnostics and repairs not authorized by the consumer in violation of 815 ILCS 306(10);

E. Committing other violations of the Illinois Automotive Repair Act.

47. Defendants' engaged in further fraudulent and deceptive practices and violated the Illinois Consumer Fraud and Deceptive Practices Act in one or more of the following ways:

A. Falsely representing that certain transmission parts obtained from the Vehicle were worn and in need of replacing in an attempt to induce Bush to authorize and pay for unnecessary diagnostics and repairs;

B. Falsely representing that certain transmission parts were removed from the Vehicle when they were, in fact, removed from another vehicle;

C. Refusing to accept Bush's credit card after inducing Bush to believe that a credit card was an acceptable method of payment;

D. Asserting and charging unauthorized storage charges in an effort to bully, threaten, and induce Bush into paying for unauthorized and unnecessary diagnostics and repairs;

E. Threatening to sell the Vehicle in an effort to bully, threaten, and induce Bush into paying for unauthorized and unnecessary diagnostics and repairs;

F. Falsely asserting a lien on the Vehicle that is barred pursuant to 815 ILCS 306/75 in an effort to bully, threaten, and induce Bush into paying for unauthorized and unnecessary diagnostics and repairs;

G. Falsely representing to Bush that he has "no choices in this stuff – it's my shop" in an effort to bully, threaten, and induce Plaintiff into paying for unauthorized and unnecessary diagnostics and repairs.

48. As a direct and proximate cause of Defendants' violations of the Illinois Consumer Fraud and Deceptive Practices Act, Bush has incurred damages, including but not limited to the unnecessary purchase of a transmission, loss of the use and enjoyment of Plaintiff's property, expenses related to his delay in returning to Georgia, expenses relating to his obtaining alternative transportation, and other damages.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter judgment in his favor and against each of the Defendants, jointly and severally, and award Plaintiff compensatory, consequential, and punitive damages, and attorneys' fees, and costs.

COUNT III
COMMON LAW FRAUD

49. Plaintiff re-alleges and incorporates by reference paragraphs "1" through "38" as its paragraph "49," as though fully set forth herein.

50. Bush relied on Defendants' false representations to his detriment by purchasing an alternate transmission, authorizing Mr. Transmission to install the alternate

transmission, surrendering use and possession of the Vehicle to Mr. Transmission, and foregoing his planned return to his home in Georgia.

51. As a direct and proximate cause of Defendants' fraudulent conduct, Bush has incurred damages, including but not limited to the unnecessary purchase of a transmission, loss of the use and enjoyment of Plaintiff's property, expenses related to his delay in returning to Georgia, expenses relating to his obtaining alternative transportation, and other damages.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter judgment in his favor and against each of the Defendants, jointly and severally, and award Plaintiff compensatory, consequential, and punitive damages, and attorneys fees, and costs.

COUNT IV
DECLARATORY AND INJUNCTIVE RELIEF

52. Plaintiff re-alleges and incorporates by reference paragraphs "1" through "38" as its paragraph "52," as though fully set forth herein.

53. A real and actual controversy exists over:

A. Whether Defendants are entitled receive payment from Bush;

B. Whether Defendants are entitled to assert a lien over the Vehicle;

C. Whether Defendants are entitled to storage charges;

D. Whether Defendants are entitled to continued possession of the Vehicle.

WHEREFORE, Plaintiff requests that the Court determine the rights of the parties and enter an Order declaring;

A. That Defendants are not entitled to receive payment from Bush as the diagnostics and repairs performed on the vehicle were not authorized and were not necessary;

B. That Defendants are not entitled to a lien on the Vehicle because they violated the Illinois Automotive Repair Act and engaged in other wrongful conduct with respect to the diagnostics and repair of the Vehicle;

C. That Defendants are not entitled to storage charges because they violated the Illinois Automotive Repair Act and engaged in other wrongful conduct with respect to the diagnostics and repair of the Vehicle;

D. That Defendants are not entitled to continued possession of the Vehicle because the violated the Illinois Automotive Repair Act and engaged in other wrongful conduct with respect to the diagnostics and repair of the Vehicle;

E. Ordering Defendants to immediately surrender possession of the Vehicle and any and all parts and other items removed from the Vehicle to Plaintiff.

F. Granting Plaintiff any other declaratory, injunctive, or other relief the Court deems fair, just, and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS SO TRIABLE

Respectfully submitted,

DWAYNE A. BUSH

By: ______________________________
David L. LaPorte, one of his attorneys

David L. LaPorte
LaPorte & Associates, P.C.
P.O. Box 400
Flossmoor, IL 60422
(312) 339-8555
dlaportelaw@gmail.com
ARDC No. 6237509